IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.256 of 2006

Decided on: October 19, 2006

Sarwan Singh and others **.....Appellants.**

VERSUS

Smt. Dhan Devi **.....Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Appellants : Mr. N.K. Thakur, Advocate.

For the respondent : Mr. H.K. Bhardwaj, Advocate.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. Respondent, who has become a joint owner to the extent of 2 Marlas in Khasra No. 3478, the total area of which is 2 Kanals 12 Marlas, filed a suit for injunction against the present appellants restraining them from changing the nature of the land, comprised in Khasra No.3478, till partition takes place. She alleged that the appellants-defendants were threatening to raise construction on the vacant portion of Khasra No.3478, without her consent and to her detriment.

3. The trial Court dismissed the suit holding that the plaintiff-respondent was out of possession. Appeal was filed by the respondent-plaintiff. The first Appellate Court has held that since the respondent-plaintiff is admittedly a joint owner, even though to the extent of 2 Marlas only, and hence a co-sharer, the nature of the suit

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Whether the reporters of the local papers may be allowed to see the judgment?

property, which is joint, cannot be changed without her consent and to her detriment. Consequently, a decree of permanent prohibitory injunction has been passed, restraining the appellants-defendants from raising construction over the suit property and changing the nature thereof till partition.

4. I have heard the learned counsel for the appellants. He does not deny that respondent-plaintiff is recorded as joint owner with the appellants-defendants, though that is a different matter that she is alleged to have become co-owner by deceitful means, as her husband, who was joint owner with the appellants-defendants on Khasra numbers 3477 and 3478, has made transfer of two Marlas area in her favour. The transfer made by the husband of the respondent-plaintiff in her favour has not been challenged. Therefore, atleast for the purpose of deciding the present lis, the fact remains that the respondent-plaintiff is a joint owner with the appellants-defendants and, therefore, the nature of the suit property cannot be changed without her consent and to her detriment. For the foregoing reasons, no fault can be found with the decree passed by the first Appellate Court.

5. Learned counsel has submitted that taking advantage of the decree, the respondent-plaintiff shall not be allowing the appellants even to carry out the repairs of the existing structures, like houses, sheds, khurlis, etc. There should be no apprehension in the mind of the appellants-defendants that they will not be allowed to repair the existing structures of the aforesaid type in the garb of the said decree. The decree passed by the first Appellate Court is

specific in the sense that it restrains the appellants-defendants from raising any new construction and thereby changing the nature of the suit property till partition takes place. With this clarification, the appeal is dismissed as no substantial question of law arises.

October 19, 2006(sd) **(Surjit Singh), J.**